IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 165 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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OMPRAKASH AGARWAL

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Revision Application No. 165 of 2000

MR AR GUPTA for Petitioner No. 1-4

MR BD DESAI Ld. APP for Respondent No. 1

NOTICE SERVED BY DS for Respondent No. 2

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 24/04/2002

ORAL JUDGEMENT

Heard Mr. AR Gupta learned counsel for the petitioner and Mr. BD Desai learned APP for respondent-State.

During the course of oral submisions, Mr Gupta for the petitioner has placed reliance on following decisions:

1. 2000 Cri.L.J. p. 3125
2. 2000 Cri.L.J. P. 956
3. 1999 Cri.L.J. p. 2918
4. 1998(3) Crimes 279
5. 1998 Cri.L.J. 53

6. 1997 Cri.L.J. 2036
7. AIR 1971 SC 1525
8. 1987 Cri.L.J. 584
9. AIR 2000 SC 665
10. AIR 1955 SC 196

It is submitted that above all the decision except at sr. no. 1, were brought to the notice of the ld. Special Judge at the relevant point of time when the discharge application was filed and it was also argued that this is a case of clear breach of mandatory rule-7 of Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Rules, 1995. This point agitated before the ld. Special Judge which is reflected in para-5 of the impugned order but the ld. Special Judge has neither discussed nor responded to the back-bone of the argument advanced and ultimately rejected the application stating that there is no merits in the application. The short cut ought not to have been adopted by the Ld. Special Judge.

Having considered the submissions advanced before this Court, there was ample scope to the ld. Special Judge to decide whether the provisions of rule-7 is whether mandatory or directory and this decision would have change the result i.e. ultimate finding. Considering the language of the Rule and the verdict of all the cited decisions, it was also obligatory on the part of the ld. Special Judge to hold whether it would affect the entire proceedings or not.

Mr. Desai ld. APP has rightly submitted that this matter can be sent to the ld. Special Judge directing him to hear and decide the application denovo and pass reasoned order referring decisions cited by the applicant-accused and any other decision which may be brought to the notice of the ld. Special Judge during the course of fresh hearing.

Accepting this submissions and the worth of the submissions advanced by Mr. Gupta learned counsel for the petitioner, this revision application is allowed. The impugned order dated 4.4.2002 is hereby quashed and set aside. The Ld. Special Judge is directed to hear and decide the application for discharge denovo, in light of the above observations, and may pass reasoned order.

The ld. Special Judge may hear and decide the application as expeditiously as possible. Rule made absolute to the aforesaid extent.

(C.K. BUCH, J.)
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